IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

MONDAY, THE 15TH OCTOBER 2007 / 23RD ASWINA 1929

MFA.No. 532 of 2002()

OPMV.927/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, MANJERI
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APPELLANT/PETITIONER:

SHABARISH, AGED 23 YEARS,
S/O. P.V. NARAYANANKUTTY NAIR,
P.V. COTTAGE, MALAPPURAM.

BY ADV. SRI.ANIL SIVARAMAN

RESPONDENTS/RESPONDENTS:
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1. **THOTTITHODI MUHAMMED BASHEER,**
   S/O. IMBICHIBAVA, AREACALAKATH,
   THUVANNUR (DRIVER).

2. **K.T. MUHAMMEDALI, S/O. ABDULKHADER**
   DASRUL SALAM, PUNNAPPALA, WANDOOR,
   MALAPPURAM (OWNER).

3. **ORIENTAL INSURANCE CO.LTD.,**
   MATTANCHERY.

4. **K. SHIBU, S/O. NARENDRAN,**
   ARCHANA, KADAMBODE P.O., PANDALLUR
   (DRIVER-CUM-OWNER).

5. **ORIENTAL INSURANCE CO.LTD.,**
   CHEROTTY ROAD, KOZHIKODE.

R4 BY ADV. SRI.M.AJITH
R3 & R5 BY ADV. SRI.MATHEWS JACOB

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 15/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA,JJ.

M.F.A.NO. 532 OF 20O1

Dated this the 15th day of October, 2007

JUDGMENT

Koshy, J.

The appellant suffered very serious injuries in a motor accident on 5.5.1995. He claimed compensation of Rs.10 lakhs. The Tribunal found that the accident occurred due to the negligent driving of the bus by the first respondent. The offending vehicle was owned by the 2nd respondent and insured by the 3rd respondent Insurance company. However, the amount of compensation awarded was only Rs.5,97,000/- with 9% interest apart from cost. The quantum of compensation alone is disputed in the appeal. It is the case of the appellant that he was employed as manager of a travel agents' firm by name 'Travel Vision' at Allahabad and he was getting Rs.7000/- per month as salary. He stated that he has passed six month course conducted by the Internal Air Transport Association and obtained certificate. According to him, he has also passed some computer courses also. As per the salary certificate produced, at the time of accident, he was getting a monthly salary of Rs.5500/-. The Tribunal fixed Rs.4000/- as the monthly income.

He was aged 24 at the time of accident. Considering his age, taking guidelines from 2nd schedule, 17 was taken as the multiplier. The Medical Board certified his disability as 32%. Applying 17 as the multiplier, the Tribunal calculated his loss of earning at Rs.2,61,120/-. Apart from the above, for functional disability an amount of Rs.90,000/- was granted. It is the contention of the appellant that for future treatment, amount awarded was very low. It is also contended that since his original knee has to be replaced. Therefore, he is continuing treatment. He requires much higher amount but only Rs.10,000 was awarded for future treatment. Counsel for the Insurance Company contended that the Tribunal has granted compensation for loss of earning power due to disability and again compensation was granted for disability. This is not correct in view of the decision of the Full Bench in Oriental Insurance Co. Ltd. v. Hari Prasad [2005 (4) KLT 1977] as compensation cannot be awarded separately on account of permanent disability and for loss of earning capacity due to disability. Over and above the loss of earning capacity due to functional disability, Rs.90,000/- was awarded in the case. It is also submitted that considering the total amount of Rs.5,97,000/- awarded and the interest he may attain from the compensation,

no further expenses can be granted under future treatment. We also notice that no evidence was adduced to show that he further incurred additional expenses for future treatment. Considering the amount awarded, we are of the opinion that just and reasonable compensation was awarded and there is no merit in the appeal.

Appeal is dismissed.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

krs.

J.B.KOSHY & K.HEMA,JJ.

M.F.A.NO. 532 OF 20O1

Dated this the 15th day of October, 2007

JUDGMENT